

New Construction Eligibility

New construction under the Department of Veterans Affairs (VA) Loan Guaranty Program is divided into categories. These categories in turn determine the eligibility and required exhibits.

Existing Construction.

Construction that can be demonstrated to have been completed for more than one year or that has had an owner other than the builder, is considered existing construction for VA purposes.

New Construction with Ten-Year Warranties.

The following ten-year, insurance-backed warranty programs have been approved in the past for use in this area: Home Buyers Warranty (HBW 2-10), Residential Warranty Corporation (RWC), Builders Trust Warranty, and Quality Builders Warranty Corporation. The approval of warranties is currently being handled by the Department of Housing and Urban Development, Federal Housing Agency (HUD/FHA), and that agency should be contacted for questions concerning warranty approvals. Warranty programs approved by HUD/FHA must still meet state approval before they can be accepted.

Proposed or Under Construction. Properties covered by an approved ten-year warranty are acceptable during any stage of construction with plans and specifications. These properties require a final compliance inspection only. Plans and specifications are the same as for construction not covered by an approved warranty.

Existing Construction Less Than One Year Old. Construction, complete or complete except for customer preference items (such as interior paint, carpet, etc.) or escrowable exterior items, is considered existing construction for VA purposes and does not require plans and specifications as long as it is covered by an approved ten-year warranty.

New Construction without Ten-Year Warranty.

Compliance Inspections. New construction without a ten-year warranty generally requires three compliance inspections. The *first inspection* takes place after the foundation is dug, the frost footings poured and the foundation walls completed. It can take place as long as the foundation has not been back-filled. The *second inspection* takes place after all the mechanical systems (plumbing, electrical, heating/cooling) are roughed in; it takes place before drywall has been installed and while the mechanical systems are still visible. The *third or final inspection* takes place when the house is 100% complete or when possible escrow amounts need to be established.

Proposed Construction. Proposed construction for VA does not require any inspection of the subject lot before beginning construction. Proposed construction requires plans and specifications and three compliance inspections. This means that construction can advance to the point of having the foundation walls completed, but not back-filled, and still be considered proposed construction for VA purposes.

Under Construction. This is construction submitted after the first compliance inspection stage has been passed, but the structure is substantially complete. Properties under construction are eligible for the VA loan guarantees provided:

- a. There was a first inspection done by VA or HUD/FHA **or**
- b. The loan is for completion of a dwelling **by a veteran for his or her own occupancy** and (1) the veteran agrees to pay for a special compliance inspection to determine whether the completed construction meets VA requirements for existing construction, (2) appropriate plans and specifications are submitted showing all work to be completed and (3) the veteran agrees to pay for any other required compliance inspections.

If the above criteria are not met, then the property may be eligible once completed except for customer preference items and escrowable exterior items, see below.

Existing Construction Less Than One Year Old And Not Previously Occupied. These properties are acceptable if inspected by HUD/FHA or VA during construction or if they meet the requirements for "Special Exception" processing.

	With Ten-Year Warranty	Without Ten-Year Warranty
Proposed	Acceptable with Plans and Specifications, Final Inspection Only	Acceptable with Plans and Specifications Three Inspections required
Under Construction	Acceptable with Plans and Specifications Final Inspection only	Acceptable with VA or FHA inspections or veteran building for his or her own occupancy or with HUD approved local inspections
Existing less than 1 year	Acceptable as existing construction with veteran certification	Acceptable if VA or FHA inspections completed or if "Special Exception" requirements are met

Local Inspections in lieu of VA Compliance Inspections. First and second compliance inspections can be waived for properties built in a jurisdiction in which the Department of Housing and Urban Development (HUD) has approved local building authority inspections in lieu of HUD inspections. In such cases the following requirements must be met:

- a. Local building authority inspections have been approved by the HUD office in lieu of HUD inspections in accordance with HUD Handbook 4145.1, REV-2, paragraph 4-26.
- b. The requester completes VA Form 26-1805, VA Request for Determination of Reasonable Value, to show “/local” after the “VA” block in item 29A.
- c. A third stage (final) VA compliance inspection is performed by a VA fee inspector assigned by the VA office of jurisdiction. The purpose of the inspection will be to verify that the property meets VA Minimum Property Requirements for proposed construction and was built in substantial conformity with the construction exhibits on which the VA value determination was based. Any changes to those construction exhibits must be listed on VA Form 26-1844, *Request for Acceptance of Changes in Approved Drawings and Specifications*, approved by VA and provided to the inspector at the time of inspection.

Every VA notice of value processed under this change will require each of the following items with the lender's request for guaranty:

- a. A properly executed “clear” third stage (final) VA Form 26-1839, Compliance Inspection Report, and
- b. An occupancy permit or other appropriate documentation which represents local authority verification that construction has been fully completed and meets applicable building codes.

This has no effect on other proposed construction related VA requirements, or on properties appraised as new or existing construction, or in cases involving a VA Specially Adapted Housing grant.

“Special Exception” Processing.

A property is eligible for “special exception” processing if it meets the following criteria:

1. The request for appraisal is made on behalf of a prospective veteran-purchaser who acknowledges in writing his or her awareness that the property was not inspected during construction by either VA or HUD and as such will not qualify for Government assistance in the correction of structural defects, and that VA will not intercede on the veteran's behalf in the processing of construction complaints; and
2. At the time of appraisal, the construction is fully complete or completed up to the installation of customer preference items (e.g., appliances, finish fixtures, carpeting) and those exterior improvements for which escrows are permissible; and
3. The property is the product of a builder who has never been involved with VA financing, or who only occasionally is involved with VA financing, or the property is located in an area where the services of a fee compliance inspector are not readily available; and
4. The lender provides a copy of VA Form Letter 26-312, completed by the builder; and
5. The lender provides VA with a copy of documentation issued by the local building authority to verify that construction was acceptably completed, such as a final inspection or occupancy permit. In those areas that do not have building authorities that perform building inspections, the builder must provide a written statement that the dwelling was not inspected during construction by any State, county, or local jurisdiction; and
6. The builder certifies in writing that, “The dwelling was constructed in accordance with standard building practices and is in conformity with all applicable building codes and complies with the energy conservation standards of the 1992 Council of American Building Officials Model Energy Code (MEC).” The builder must also state in writing that he or she is aware that this property is being accepted by VA on an exception basis only upon the request of the veteran-purchaser, and that normal VA processing requires that plans and specifications be submitted prior to the start of construction and VA compliance inspections be performed at specified times during construction.

Note: When a builder who regularly participates in the VA Loan Guaranty program misses a required inspection on a property appraised as “proposed construction,” we will consider waiving the inspection if there is a valid reason for missing it. The case should not be reanalyzed as a “special exception” case.

We have established a tracking system to assist in determining whether a builder is using the “special exception” system to bypass regular VA proposed construction processing and inspections. Builders found to be doing so will not be allowed to use “special exception” processing.

We will consider, on a case by case basis, properties that do not appear to meet any of the set definitions within this memorandum.

Compliance Inspections

New construction built under an approved ten-year protection plan only requires a final compliance inspection to determine that all construction has been acceptably completed in conformance with the plans and specifications submitted for appraisal. When there is no ten-year construction warranty and HUD has not approved the locality for local inspections in lieu of HUD compliance inspections, we require three compliance inspections. These inspections are performed at the following stages:

- a. **First Inspection.** The first compliance inspection is done after the foundation is complete and ready for back-fill. It checks the footings, foundation walls and waterproofing.
- b. **Second Inspection.** The second compliance inspection is performed after the walls are framed and the mechanical systems—plumbing, electrical, and heating and cooling, etc.—are roughed in.
- c. **Third Inspection.** The third (final) compliance inspection is performed after the property is 100% complete and ready for loan guarantee.

In the event necessary items are not complete at the time of inspection, an additional inspection will be required. A third inspection can be performed to establish escrow amounts for items to be completed after the loan guarantee. A final inspection will then be required—the fee for this inspection should be taken into account—when the escrowed items are complete.

First and second compliance inspections can be waived in any jurisdiction in which the Department of Housing and Urban Development (HUD) has approved local building authority inspections in lieu of HUD inspections. Please see section under eligibility for details.

When a compliance inspection finds no evidence of nonconformance, the inspector may sign the report on VA's behalf. An inspector signing on VA's behalf must be sure that all required previous inspections have been completed with the structure in conformance.

Builder File Data

The Department of Veterans Affairs does not "approve" builders. Each builder participating in the VA Loan Guaranty Program must have the following fully completed forms on file in this office.

1. Request for Organizational Data from Builder, FL 26-312,
2. Equal Employment Opportunity Certification, VA Form 26-421, and
3. VA Affirmative Marketing Certification, VA Form 26-8791.

We do maintain a file for each participating builder. Lenders do not need to know a builder's reference number to order an appraisal, but lenders should verify that these forms are on file before ordering an appraisal. **No Certificate of Reasonable Value can be issued unless we have these forms on file for the builder.**

Proposed Construction Exhibits

Note: Program participants are encouraged to reduce the size of all large format construction drawings prior to distribution to VA fee appraisers, compliance inspectors and field stations. Building plans, elevations and details that are traditionally drawn at ¼ inch scale and larger can be photographically reduced or computer-drawn to be clearly readable on 8.5 by 14 inch sheets. Exhibits that are normally provided in a smaller format, such as specifications, calculation sheets, manufacturer's detail sheets and certifications, will not be further reduced.

We require **three identical complete sets** of construction exhibits. In those cases where the requestor decides to order the appraisal and inspection by phone, one set of exhibits will be sent to VA, one to the appraiser and one to the inspector. Requestors can continue to submit all three sets of exhibits to VA for review before an appraiser is assigned.

The following exhibits are required for proposed construction cases:

- a. **Three complete sets** of working drawings, including the mandatory Proposed Construction Certification, and all of the following:
 1. Plot plan, including grade levels at corners of lot and corners of structure and location of all improvements including well and septic system, if applicable.
 2. Foundation or basement plans.
 3. Plans for all floors.
 4. All exterior elevations.
 5. Sectional wall details.
 6. Heating and cooling load calculations and layout.
- b. Three sets of specifications on VA Form 26-1852 or equivalent. Each set of specifications must be signed by the builder and veteran.
- c. **Safe Drinking Water Act Certification.** The builder or contractor must certify that any solders or flux used in construction will not contain more than 0.2 percent lead and any pipes and pipe fittings used will not contain more than 8.0 percent lead.

Specifications

Specifications are submitted on VA Form 26-1852. We will allow a computer generated version of this information if the computer generated form covers the same information in the same order as VA Form 26-1852.

The specification sheet should include makes and models for all fixtures, including plumbing and cabinets. Carpet should include the make and the ETL number. Heating and cooling units should include the make and the model as should all appliances.

Allowances

Builders often include allowances for appliances, carpeting or lighting. We cannot value allowances. In order for these items to be covered in the appraisal, the purchaser must make a decision on the items to be purchased under the allowance and this information should be submitted to VA either on or accompanying the specification sheet. This is the only way to include these items in value at the time of appraisal. As an alternative, a change order, VA Form 26-1844, can be completed later adding these items to value. We cannot add them to value until we know what they are.

Change Orders

Because values on proposed construction are based on plans and specifications and because inspectors are verifying that the improvements are completed according to the plans and specifications, we must be informed of any changes to the plans and specifications. Change orders are designed both to let the inspectors know of any changes and to allow VA to determine any value consideration due to the changes. Change orders must be signed by the builder, the veteran and the lender. This is the only way we can make sure that all parties agree to the changes.

When the revisions are simply changes of an item to an item of equal value and utility and there is no value question, change orders can be signed by the compliance inspector on VA's behalf at the site. For example, substitution of a furnace to an equivalent furnace of similar capacity can be signed off by the inspector. This holds true for most appliances and fixtures; many items in new construction fall under this category. If the revision represents an upgraded or downgraded item, the change order must be submitted to VA for review and approval.

Plan Certification

In all proposed construction cases, VA requires a certification from an architect, surveyor, land planner, professional engineer or other technically qualified individual approved by VA for such purposes, that the drawings or plans and related specifications submitted are in conformity with applicable VA Minimum Property Requirements. Because we do not maintain a roster of individuals qualified to make this certification, on cases in which the lender wishes to submit the plans directly to the appraiser, we will require that the certification be completed by an architect, surveyor, land planner or professional engineer. This certification is extremely important and we can refuse to accept certifications from individuals whose certifications have been found to be unacceptable to VA.

The certification will read substantially as follows:

"I do hereby certify that this drawing or plan and related specifications meet all local code requirements and are in substantial conformity with VA Minimum Property Requirements including the energy conservation standards of the 1992 Council of American Building Officials (CABO) Model Energy Code (MEC)."

The certification must include the name, title (and any identifying license number) and address as well as an original signature. The certification must be typed, printed or hand written on the plan itself or on a separate sheet that adequately identifies the certification with the plans and specifications.

VA does not review all the plans for code conformance, nor do we expect a lender's staff to have this expertise. This certification by an architect, surveyor, land planner or professional engineer generally assures all parties that the plans and specifications meet the relevant codes. The VA Minimum Property Requirements for proposed construction are included as a separate section of this memorandum.

VA Minimum Property Requirements for Proposed Construction

In areas Other Than "Housing Credit Shortage Areas," the following requirements apply.

1. State, county or local building codes enforced in jurisdictions where the property is located or, in the absence of a state, county or local building code enforced in the jurisdiction where the property is located, the VA Minimum Property Requirements shall be the applicable provisions of the current International Code Council (ICC) *International One- and Two-Family Dwelling Code*. When the *International One- and Two-Family Dwelling Code* applies, the mandatory codes or standards incorporated by reference and the requirements of 24 CFR 200.926e shall apply. In all proposed construction cases, VA will require compliance with 24 CFR 200.926d, Construction Requirements and the 1992 *Model Energy Code* (MEC). Manufactured housing units (HUD-code) which are inspected in the manufacturing plant by HUD, are required to meet special standards and the requirements of the 1992 MEC do not apply. (For a copy of 24 CFR 200.926d and 200.926e, refer to HUD Handbook 4910.1, *Minimum Property Standards*)
2. Those methods, practices and kinds or uses of materials required, advocated or approved in Department of Housing and Urban Development (HUD) bulletins, issued by HUD relative to new materials and methods of construction.
3. As applicable, those standards and practices recommended in HUD Handbooks 4140.1, *Land Planning Principles for Home Mortgage Insurance*; 4140.2, *Land Planning Procedures and Data for Insurance for Home Mortgage Programs*; and 4140.3, *Land Planning Data Sheet Handbook*, which are referred to as the **VA Minimum Land Development Requirements**.
4. All those requirements, practices, standards, etc., listed in subparagraphs (2) and (3) above, issued by HUD, and those which modify or supplement previous issues, will be applicable for VA purposes.
5. Lead-based paint shall not be specified or used on any interior or exterior surface for any individual proposed property or any property included in a proposed committee appraisal case.

Housing Credit Shortage Areas.

The requirements of VA Pamphlet 26-1, Minimum Property Requirements for Proposed Construction in Areas Designated by the Secretary of Veterans Affairs as "Housing Credit Shortage Areas."

High-Pressure Gas and Liquid Petroleum Transmission Lines.

No part of any residential structure can be located within the outer boundary of the pipeline easement. If a residential structure will be located outside the outer boundary of the pipeline easement, but within an area that extends 220 yards on either side of the centerline of the transmission line, the Certificate of Reasonable Value or Master Certificate of Reasonable Value must be conditioned for the following:

For high-pressure gas pipelines, a statement from an authorized official of the pipeline company must be submitted certifying compliance with 49 CFR 192.607, 192.609, 192.611 and 192.613.

For liquid petroleum pipelines, a statement from an authorized official of the pipeline company must be submitted certifying that the pipeline complies with section 195, 49 CFR and all amendments thereto.

Pipeline companies maintain records of the statements per agreement with the Department of Transportation as recorded in the Federal Register, Volume 35, Number 161, dated August 9, 1970. Statements received by VA will be maintained in a file for future reference.

Any detached improvements which are in, or partially in, a pipeline easement will not receive value in the appraisal process and in the reasonable value determination on a VA CRV or lender's NOV.

High Voltage Electric Transmission Lines.

No dwelling or other improvement which may become the security for a VA guaranteed loan can be located within the transmission line easement. Any detached improvements which are in, or partially in, a high voltage electric transmission line easement will not receive value in the appraisal process and in the reasonable value determination on a VA CRV or lender's NOV.

New Construction in Special Flood Hazard Areas.

VA cannot accept new construction built in a special flood hazard area unless the construction meets the following criteria established by the Federal Emergency Management Agency:

1. The minimum grades at the building and openings must be at elevations above the 50 year flood level.
2. The floor elevations of all habitable space must be at elevations above the 100 year flood level.
3. Crawl spaces and basements must not pond or be subject to prolonged dampness.

Onsite Improvement Escrows

Onsite improvements include any improvements to the subject lot relating to the new construction. Besides the buildings themselves, they would include wells, septic systems, final lot grading, seeding or sodding, driveways, exterior concrete work (such as sidewalks or patios) and finish items such as paint whose application can be affected by weather.

The decision to establish an escrow is up to the lender. Lenders no longer need prior approval by Construction & Valuation for escrows. In general, escrows should be few and should only be used in situations where items cannot be completed due to back orders of materials or inclement weather. Escrows should not be the norm, but rather the exception. Lenders are responsible to assure that all work is completed and funds disbursed in a timely manner. If the work is not completed, it is the lender's responsibility to make sure the escrowed funds are used to complete the required work.

Escrows must be for 1½ times the completion cost of the escrow items. It is the lender's responsibility to assure that adequate funds are held in the escrow account. Exterior escrows should have a reasonable expiration date. Escrows for incomplete items are required in order to obtain a Loan Guaranty Certificate (LGC) before the work is done. In cases where the lender does not anticipate submitting a loan package before the work is complete, the lender can at their option hold their own escrow to assure completion. In the latter case, the lender must assure that the work is complete before submitting a loan package for guarantee.

Offsite Improvements

Offsite improvements are those improvements that benefit the whole subdivision or the public. They consist of, but are not limited to, such items as public roads, sidewalks, curbs and gutters, storm sewers, street lighting, public trails and parks. These items are only an issue if the subject property will be assessed for their completion.

Access to the subject property must be by public road or permanent easement protected by a recorded use and maintenance agreement. In situations where the access road has been dedicated, but not yet completed and accepted, for public domain, arrangements must be made assure adequate access to the subject property in the event the roads are never completed or accepted. This may be in the form of an escrow or a surety bond with the local authority.

Surety Bond

1. The surety bond must be acceptable to the local government authority and written by a surety company approved by the United States Treasury Department.
2. The amount of the surety bond is at least equal to the estimated cost of installing the offsite improvements.
3. The VA is furnished a letter by the local government authority, signed by the proper official, stating that the offsite improvements will be installed without cost or assessments to the purchasers or the abutting properties and that, if the builder does not complete the improvements by a specified date, the local authority will be responsible for completion of the improvements within a reasonable time, without cost or assessments to the purchasers of the properties affected by the improvements.
4. The local government authority furnishes written evidence that it will be responsible for continuous maintenance of the completed offsite improvements, and
5. The principal law officer of the local authority advises VA that the local authority is legally empowered to assure these obligations.

Escrow

An escrow must be for 1½ times the estimated cost to complete the offsite improvements directly affecting the subject property. For a road, this means the cost to complete the road giving access as far as the subject property. For a further explanation of escrow procedures for offsite improvements, see the *VA Lender's Handbook*, Section 6.15.

✓ Proposed Construction Exhibit List	
	1. Plot Plan
	a. Grade levels at corners of lot
	b. Grade levels at corners of house
	c. Location of well (if applicable)
	d. Location of septic system tank and field (if applicable)
	2. Floor Plans (reduced size highly recommended)
	a. Foundation or basement plans
	b. Plans for all floors
	c. Certification A on back of first floor plans or separate certification sheet
	d. All exterior elevations
	e. Sectional wall details from foundation footing to roof ridge
	f. Electrical and heating/cooling layouts (may be included on floor plans)
	3. Heating and cooling load calculations
	4. Specifications Sheets (VA Form 26-1852 or equivalent) with original signatures by purchaser and builder
	5. Clean Drinking Water Act Certification
	6. VA Form 1805—Request for Determination of Reasonable Value (one copy)

Three complete sets of plans and specifications are required.